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Kimberly Moffatt Jones
1368 E. Mountain Drive
Montecito, CA 92108
Self-represented Plaintiff

**UNITED STATES
DISTRICT**

2:16-cv-00243-MMD-GWF

KIMBERLY MOFFATT JONES

Plaintiff,

vs.

KATHRYN STRYKER WIRTH, and JOLLEY
URGA WOODBURY & LITTLE aka JOLLEY
URGA WOODBURY & STANDISH aka
JOLLEY URG WIRTH & WOODBURY,
Defendants.

COMPLAINT FOR:

- 1) Legal Malpractice;**
- 2) Negligence; and**
- 3) Breach of Fiduciary Duty**

Plaintiff, KIMBERLY MOFFATT JONES, complains against Defendants KATHRYN STRYKER WIRTH, and JOLLEY URG WOODBURY & LITTLE aka JOLLEY URG WOODBURY & STANDISH aka JOLLEY URG WIRTH & WOODBURY and DOES 1-10 as follows:

GENERAL ALLEGATIONS APPLICABLE

TO ALL CAUSES OF ACTION

(Against All Defendants)

1. Plaintiff, KIMBERLY MOFFATT JONES (hereinafter "Plaintiff"), is, and at all times herein mentioned was, an individual and a resident of the State of California.

2. Plaintiff is informed and believes and, based thereon, alleges that Defendant, KATHRYN STRYKER WIRTH (hereinafter "Wirth"), is, and at all times herein mentioned was, an individual and a resident of the State of Nevada and an attorney at law, duly admitted and licensed to practice law in the State of Nevada.

3. Plaintiff is informed and believes and, based thereon, alleges that Defendant, JOLLEY URG WOODBURY & LITTLE, aka JOLLEY URG WOODBURY & STANDISH, aka JOLLEY URG WIRTH & WOODBURY, (hereinafter "Jolley Urga"), is, and at all times herein mentioned was, a corporation, duly organized and existing under the laws of

1 the State of Nevada, doing business in the City of Las Vegas, Clark County Nevada.

2 4. Plaintiff is informed and believes and, based thereon, alleges that, at all times
3 mentioned herein, Defendant Wirth was a shareholder and an agent of the Defendant Jolley
4 Urga, and in doing the things herein alleged was acting within the scope of such employment and
5 agency.

6 **JURISDICTION AND VENUE**

7 5. This is an action for a Legal Malpractice against the Defendants.

8 6. On information and belief, Defendant Wirth is a citizen of the State of Nevada
9 and conducts business directly in Clark County, Nevada. The amount in controversy exceeds
10 the sum of \$75,000, exclusive of interest and costs.

11 7. On information and belief, Defendant, Jolley Urga, is a Nevada professional
12 corporation organized under the laws of the State of Nevada with its principal place of business
13 in Clark County, Nevada, and, therefore, is a citizen of the State of Nevada. The amount in
14 controversy exceeds the sum of \$75,000, exclusive of interest and costs.

15 8. This Court has jurisdiction over the subject matter of this action pursuant to Title
16 28 U.S.C. §1332 (Diversity of Citizenship).

17 9. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

18 **FIRST CAUSE OF ACTION**

19 (Legal Malpractice Against Defendants

20 Wirth, Jolley Urga and DOES 1 through 10)

21 10. Plaintiff refers to and incorporates herein the General Allegations stated in
22 Paragraphs 1 through 9 alleged herein above, and makes them a part hereof as though set forth in
23 their entirety herein.

24 11. Based on the sworn testimony of Defendant Wirth, an attorney-client relationship
25 was formed between Defendant Wirth and Plaintiff and between Defendants Jolley Urga and
26 DOES 1 through 10, inclusive, and Plaintiff on or about June 16, 1998. These facts were
27 acknowledged to be true by Defendant Wirth, while testifying under oath at her deposition on
28 November 4, 2013 in case number D-12-470239-U, filed in the Eighth Judicial District Court for

1 Clark County, Nevada.

2 12. On July 1, 1998, Defendants, and each of them, acting through Defendant Wirth,
3 represented Plaintiff in negotiating and executing a Prenuptial Agreement and Defendant Wirth
4 personally appeared with Plaintiff and signed the Prenuptial Agreement as Plaintiff's attorney on
5 this day.

6 13. As a result of the attorney-client relationship created by the conduct described
7 above, which relationship has been acknowledged, under oath, by Defendant Wirth, at all times
8 relevant hereto, Defendants, and each of them, owed a duty of care to Plaintiff to use such skill,
9 prudence, and diligence as lawyers of ordinary skill and capacity possess in exercising and
10 performing the tasks which they undertake in accordance with relevant legal standards of care
11 within the practice of law.

12 14. As a result of the attorney-client relationship created by the conduct described
13 above, which relationship has been acknowledged, under oath, by Defendant Wirth, at all times
14 relevant hereto, Defendants, and each of them, who held themselves out to the public as
15 possessing greater than ordinary knowledge and skill in the field of family law, had a duty to
16 represent plaintiff with the reasonable care, skill, and diligence ordinarily possessed and
17 exercised by attorneys specializing in the field of family law, under similar circumstances.

18 15. Nevada Rules of Professional Conduct, Rule 1.6, provides in pertinent part, that a
19 lawyer shall not reveal information relating to representation of a client unless the client gives
20 informed consent, the disclosure is impliedly authorized in order to carry out the representation,
21 or the disclosure is permitted by statute. A lawyer is also required to make reasonable efforts to
22 prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information
23 relating to the representation of a client.

24 16. Plaintiff was named as a defendant in the case of Fletcher Jones, Jr. v. Kimberly
25 Jones, case number D-12-470239-U, which was filed in the District Court, Family Division, in
26 Clark County, Nevada, on October 4, 2012. Fletcher Jones Jr. (hereinafter "Jones"), sought
27 specific performance and to enforce three agreements, a Prenuptial Agreement, Marital
28 Settlement Agreement and Post Marital Agreement, entered into between Jones and Plaintiff.

1 The sole cause of action before the court at the time of trial was Jones' claim for specific
2 performance of the parties' three marital agreements, including their Prenuptial Agreement
3 entered July 1, 1998.

4 17. Because Defendants, and each of them, represented Plaintiff in the execution of
5 the Prenuptial Agreement, Jones called Defendant Wirth as his witness in the civil action he filed
6 against Plaintiff, case number D-12-470239-U.

7 18. Jones noticed Defendant Wirth's deposition in case number D-12-470239-U and
8 in conjunction with that deposition, requested a copy of Defendant's file for Plaintiff. Prior to
9 the commencement of Defendant Wirth's deposition, Plaintiff signed an authorization for release
10 of certain materials from her file to her attorneys and pursuant thereto, documents were provided
11 by Defendants.

12 19. During Defendant Wirth's deposition on November 4, 2013, Defendant Wirth
13 testified that the entire file was not provided to Plaintiff. Defendant Wirth testified that her
14 "notes" were not provided and were withheld from the production of the file to Plaintiff.
15 Defendant Wirth testified that the failure to produce her notes was intentional and that the reason
16 her notes were not provided was because of the attorney-client privilege issues and work product
17 issues. Her intent to protect Plaintiff's rights to maintain those privileges and her concern that
18 reviewing them prior to testifying might result in a privilege waiver.

19 20. Defendant Wirth testified that, knowing that her notes had not been produced, she
20 had not reviewed those notes in preparation for her deposition. Defendant Wirth further testified
21 that she did not want to cause an inadvertent breach of the attorney-client privilege by reviewing
22 those documents in preparation for her deposition, which would then make those documents
23 subject to production to the opposing party and she had a professional obligation to Plaintiff not
24 to jeopardize those privileges.

25 21. Defendant Wirth was represented during her deposition by another attorney at
26 Jolley Urga, Mr. Thomas Standish, who stated unequivocally that it was his position, on behalf
27 of Jolley Urga and Defendant Wirth, that he would object to the production of Defendant Wirth's
28 notes to Jones or to Plaintiff, but "particularly to [Plaintiff]" by virtue of her testimony in case

1 number D-12-470239-U.

2 22. When Defendant Wirth was called as a witness to testify for Jones at trial on
3 February 7, 2014, she abandoned her previously acknowledged obligation to Plaintiff and
4 testified that she reviewed her file and her personal notes in preparation for her testimony on that
5 day. Defendant Wirth's review of her personal notes in preparation for the trial was contrary to
6 what she testified she did in preparation for her deposition, which was to review her file but that
7 she intentionally did not review her personal notes, because she did not want to cause a breach of
8 the attorney-client privilege.

9 23. Plaintiff's counsel objected to any testimony from Defendant based on her review
10 of her notes, but Plaintiff's objection was overruled and Defendant Wirth was permitted to
11 testify. Defendant Wirth's personal notes were also ordered to be produced to Jones and his
12 attorneys, with some, but not all of the privileged information redacted.

13 24. Plaintiff is informed and believes and, based thereon, alleges the conduct of
14 Defendants, and each of them, and their intentional disclosure of privileged attorney notes
15 maintained in the file of Plaintiff's former counsel, regarding the negotiation of the Prenuptial
16 Agreement entered between Plaintiff and her former husband and in an action related to that
17 Agreement, which they knew to be protected by the attorney-client privilege, fell below the
18 applicable standards of care as set forth herein.

19 25. By their actions at trial, Defendants, and each of them, knowingly failed to protect
20 and preserve the attorney-client privilege, to Plaintiff's detriment. Defendants, and each of them,
21 knowingly failed to take appropriate measures to assure that privileged information was not
22 disclosed to Plaintiff's adversary in case number D-12-470239-U. Defendants not only reversed
23 their position to the detriment of Plaintiff during trial with their sudden change in position, but
24 they caused confidential information, which they previously did not produce to Plaintiff during
25 discovery because it was privileged information Defendant Wirth knew was privileged and the
26 review of it prior to testimony would jeopardize the privilege. Defendants had acknowledged the
27 information at issue was entitled to the protections of the attorney-client privilege, not to be
28 disclosed to Plaintiff's adversary in those proceedings. Plaintiff's defense in that civil case was

1 so severely compromised by acts and omissions of the Defendants, and each of them, that
2 Plaintiff had no reasonable chance of prevailing at trial.

3 26. As a result of the acts and omissions of the Defendants, and each of them, and
4 their non-disclosed change of position at trial, Plaintiff was not prepared to, and was not able to,
5 controvert the new claims and information, which was disclosed for the first time during trial, in
6 any meaningful way.

7 27. In doing the things herein alleged, Defendants, and each of them, repeatedly and
8 intentionally put their own interests ahead of the interests of their former client, Plaintiff.

9 28. By their acts and omissions Defendants, and each of them, failed to take
10 appropriate measures to assure that information, which they acknowledged was protected by the
11 attorney-client privilege, and which was entitled to such protection, was not disclosed.
12 Defendants, and each of them, also prevented Plaintiff from having information which was
13 critical to her defense in advance of trial.

14 29. The work allegedly done by Defendants in their representation of Plaintiff, and
15 their actions, as well as their private and confidential discussions with Plaintiff, were critical
16 facts and events which should have been protected by the attorney-client privilege or, in the
17 alternative, if this information was somehow determined not to be so protected, this issue should
18 have been the subject of thorough discovery and investigation. Defendants prevented either from
19 occurring.

20 30. Defendants, and each of them, breached their relevant duties of care by failing to
21 adequately represent Plaintiff in accordance with relevant legal standards within the practice of
22 law, as detailed herein, and among other things, protect Plaintiff's attorney-client privileged
23 communications and Plaintiff's right to privacy.

24 31. The conduct of the Defendant's, and each of them, as described herein, was a
25 breach of Defendant's duty to exercise reasonable care, skill, and diligence on Plaintiff's behalf
26 and to protect her privileges.

27 32. The Defendant, and each of them, breached Plaintiff's rights for their own
28 perceived protections from liability that was never raised by Plaintiff.

1 Paragraphs 1 through 38 alleged herein above, and makes them a part hereof as though set forth
2 in their entirety herein.

3 40. Plaintiff hereby refers to Paragraphs 8 through 34, inclusive, of Plaintiff's First
4 Cause of Action and by so doing incorporates each of said paragraphs herein by this reference as
5 though set forth *in haec verba*.

6 41. The attorney-client relationship between Plaintiff and Defendants, and each of
7 them, gives rise to a duty of care within the scope of the relationship. The Defendants, and each
8 of them, negligently failed to exercise ordinary skill and knowledge thus departing from the
9 standard of reasonable care and said departure was the proximate cause of actual damages
10 suffered by the Plaintiff.

11 42. Defendants, and each of them, failed to comply with the applicable standards of
12 care, applicable to lawyers, described herein, in the duties that they have to a client within the
13 scope of the representation they furnish to their client.

14 43. Defendants, and each of them, failed to exercise reasonable care and skill with
15 regard to their representation of Plaintiff, by negligently and carelessly doing all of the acts and
16 omissions as herein alleged. By deviating from the applicable standards of care, Defendants, and
17 each of them, committed negligence.

18 44. As a result of defendant's negligence in doing the acts and omissions described
19 herein, Plaintiff sustained injury and loss in an amount not yet fully ascertained.

20 45. As a direct and proximate result of the Defendants actions, as alleged herein,
21 Plaintiff incurred significant attorney fees during the trial of case number D-12-470239-U, which
22 would not otherwise have been incurred.

23 46. As a direct and proximate result of the Defendants actions, as alleged herein, the
24 Court in case number D-12-470239-U made negative findings about Plaintiff. Plaintiff's defense
25 in that civil case was so severely compromised by the acts and omissions of the Defendants, and
26 each of them, that Plaintiff had no reasonable chance of prevailing at trial and resulted in a
27 Judgment being taken against Plaintiff.

28 47. As a further direct and proximate result of the Defendants actions, as alleged

1 herein, Plaintiff sustained damages, including but not limited to legal fees and costs defending
2 against the Defendants actions in case number D-12-470239-U, in an amount subject to proof.
3 Plaintiff has sustained and will continue to sustain, further and additional damages as a direct
4 result of the Defendants' negligence in an amount according to proof.

5 48. Plaintiff has suffered direct and consequential damages in excess of \$75,000.

6 **THIRD CAUSE OF ACTION**

7 (Breach of Fiduciary Duty)

8 49. Plaintiff refers to and incorporates herein the General Allegations stated in
9 Paragraphs 1 through 48 alleged herein above, and makes them a part hereof as though set forth
10 in their entirety herein.

11 50. Plaintiff hereby refers to Paragraphs 8 through 34, inclusive, of Plaintiff's First
12 Cause of Action and by so doing incorporates each of said paragraphs herein by this reference as
13 though set forth *in haec verba*.

14 51. Plaintiff hereby refers to Paragraphs 35 through 43, inclusive, of Plaintiff's
15 Second Cause of Action and by so doing incorporates each of said paragraphs herein by this
16 reference as though set forth *in haec verba*.

17 52. Defendants, and each of them, owed Plaintiff a fiduciary duty to act at all times in
18 good faith and in Plaintiff's best interests; and had a duty, among other things, (1) to perform the
19 service which they undertook and for which they were paid, with reasonable care and skill, (2) to
20 act in Plaintiff's highest and best interests at all times, (3) to not expose Plaintiff to any
21 unnecessary risk or peril; (4) to avoid impermissible conflicts of interest; (5) to protect Plaintiff's
22 confidential information; (6) to communicate with Plaintiff; (7) to deal honestly with Plaintiff
23 and (8) to not employ advantages arising from the client-lawyer relationship in a manner that is
24 adverse to the client.

25 53. Defendants and each of them, breached their fiduciary duties and obligations to
26 Plaintiff by doing all of the acts and omissions as herein alleged. Among other things,
27 Defendants breached their duties when Defendant Wirth abandoned Defendant's previously
28 acknowledged obligation to Plaintiff to preserve and protect the attorney-client privilege and

1 testified that she reviewed her file and her personal notes in preparation for her trial testimony on
2 that day. Thus resulting in an intentional waiver of Plaintiff's legal privileges.

3 54. Defendants, and each of them, breached their fiduciary duty and obligation to
4 perform the service which they undertook, to perform with reasonable care and skill and for which
5 they were paid, when Defendants, and each of them, abandoned their previously acknowledged
6 obligation to Plaintiff to preserve and protect the attorney-client privilege, and Defendant Wirth
7 reviewed her previously undisclosed personal notes in preparation for her testimony at a trial
8 between Plaintiff and her former husband and testified at trial regarding information contained in
9 those notes, without notice to Plaintiff.

10 55. Defendants, and each of them, breached their fiduciary duty and obligation to act
11 in Plaintiff's highest and best interests at all times, when Defendants, and each of them,
12 abandoned their previously acknowledged obligation to Plaintiff to preserve and protect the
13 attorney-client privilege, and Defendant Wirth reviewed her previously undisclosed personal
14 notes in preparation for her testimony at a trial between Plaintiff and her former husband and
15 testified at trial regarding information contained in those notes, all without notice to Plaintiff.

16 56. Defendants, and each of them, breached their fiduciary duty and obligation to not
17 expose Plaintiff to any unnecessary risk or peril when Defendants, and each of them, abandoned
18 their previously acknowledged obligation to Plaintiff to preserve and protect the attorney-client
19 privilege, and Defendant Wirth, without Plaintiff's consent or notice to her, reviewed her
20 previously undisclosed personal notes in preparation for her testimony at a trial between Plaintiff
21 and her former husband, knowing that such conduct would result in a privilege waiver, all
22 without the knowledge of Plaintiff, and then testified at trial regarding information contained in
23 those notes.

24 57. Defendants, and each of them, breached their fiduciary duty and obligation to
25 avoid impermissible conflicts of interest when Defendants, and each of them, abandoned their
26 previously acknowledged obligation to Plaintiff to preserve and protect the attorney-client
27 privilege, and Defendant Wirth reviewed her previously undisclosed personal notes in
28 preparation for her testimony at a trial between Plaintiff and her former husband and testified at

1 trial regarding information contained in those notes, without notice to Plaintiff.

2 58. Defendants, and each of them, breached their fiduciary duty and obligation to
3 protect Plaintiff's confidential information when Defendants, and each of them, abandoned their
4 previously acknowledged obligation to Plaintiff to preserve and protect the attorney-client
5 privilege, and Defendant Wirth reviewed her previously undisclosed personal notes in
6 preparation for her testimony at a trial between Plaintiff and her former husband and testified at
7 trial regarding information contained in those notes.

8 59. Defendants, and each of them, breached their fiduciary duty and obligation to
9 communicate with Plaintiff when Defendants, and each of them, failed to advise Plaintiff of their
10 decision to abandon their previously acknowledged obligation to Plaintiff to preserve and protect
11 the attorney-client privilege, failed to timely advise Plaintiff that Defendant Wirth had reviewed
12 her previously undisclosed personal notes in preparation for her testimony in advance of the trial
13 and failed to timely advise Plaintiff that Defendant Wirth would be testifying regarding
14 information contained in her notes at trial.

15 60. Defendants, and each of them, breached their fiduciary duty and obligation to
16 deal honestly with Plaintiff when Defendants, and each of them, abandoned their previously
17 acknowledged obligation to Plaintiff to preserve and protect the attorney-client privilege, and
18 Defendant Wirth reviewed her previously undisclosed personal notes in preparation for her
19 testimony at a trial between Plaintiff and her former husband and testified at trial regarding
20 information contained in those notes, without notice to Plaintiff.

21 61. Defendants, and each of them, breached their fiduciary duty and obligation to not
22 employ advantages arising from the client-lawyer relationship in a manner that is adverse to the
23 client when Defendants, and each of them, abandoned Defendant's previously acknowledged
24 obligation to Plaintiff to preserve and protect the attorney-client privilege, and when Defendant
25 Wirth reviewed her previously undisclosed personal notes in preparation for her testimony at a
26 trial between Plaintiff and her former husband and testified at trial regarding information
27 contained in those notes, without notice to Plaintiff.

28 62. In doing each of the above described acts and omissions, which constitute

1 Defendants' breach of their fiduciary duties owed to Plaintiff, Plaintiff sustained damages,
2 including but not limited to legal fees incurred by Plaintiff in case number D-12-470239-U and
3 the obligations under the Judgment. Plaintiff has sustained further and additional economic and
4 out of pocket losses and damages to be presented at trial, all according to proof.

5 63. The acts and omissions constituting a breach of the Defendants' fiduciary duties
6 to Plaintiff were committed with oppression, fraud and/or malice. As a result, Plaintiff, in
7 addition to actual damages, may recover and is requesting punitive/exemplary damages for the
8 sake of example and by way of punishing Defendants.

9 64. Plaintiff has suffered direct and consequential damages in excess of \$75,000.

10 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, upon all
11 Causes of Action, as follows:

12 1. As to the First Cause of Action

- 13 A. For actual damages in a sum in according to proof;
14 B. For interest as allowed by law;
15 C. For costs of suit incurred herein; and
16 D. For such other and further relief as the Court deems just and proper.

17 2. As to the Second Cause of Action

- 18 A. For actual damages in a sum in according to proof;
19 B. For interest as allowed by law;
20 C. For costs of suit incurred herein; and
21 D. For such other and further relief as the Court deems just and proper.

22 3. As to the Third Cause of Action;

- 23 A. For actual damages in a sum in according to proof;
24 B. For exemplary or punitive damages according to proof;

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28 ///

- C. For interest as allowed by law;
- D. For costs of suit incurred herein; and
- E. For such other and further relief as the Court deems just and proper.

DATED: February 8, 2016 By:



KIMBERLY MOFFATT JONES
1368 E. Mountain Drive
Montecito, CA 92108
Self-represented Plaintiff